

PT 06-38

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

HOLY FAMILY MEDICAL CENTER

Applicant

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No. 05 PT 0070
(04-16-1472)
PIN: 09-08-400-028
2004 Tax Year

Mimi Brin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Craig Donnewald of Finkel, Martwick & Colson, P.C., for Holy Family Medical Center; Shepard K. Smith, Special Assistant Attorney General, for the Illinois Department of Revenue

Synopsis:

Applicant, Holy Family Medical Center (hereinafter “Applicant” or “Holy Family”), filed an Application for Non-homestead Property Tax Exemption with the Cook County Board of Review (hereinafter the “Board”) for the tax year of 2004 for the property identified with property tax number 09-08-400-028. The Board recommended that the exemption be granted. The Illinois Department of Revenue denied the exemption on September 15, 2005, asserting that the property was not in exempt use. The applicant timely protested the denial and a hearing on the matter was held. Following the submission of all evidence and a review of the record, it is recommended that this matter

be resolved in favor of the applicant, and in furtherance of this recommendation, the following Findings of Fact and Conclusion of Law are made:

Findings of Fact:

1. Applicant, Holy Family Medical Center, filed an Application for Non-homestead Property Tax Exemption with the Cook County Board of Review for the tax year 2004, for property identified by PIN 09-08-400-028. Department Ex. No. 1 (Application for Non-homestead Property Tax Exemption)¹;
2. The Department denied the exemption on September 15, 2005, on the grounds that the property was not in exempt use. Department Ex. No. 1 (Denial of Non-homestead Property Tax Exemption);
3. The property is located at 100 North River Road, Des Plaines, Illinois. Department Ex. No. 1;
4. The legal titleholder of the property for the property tax year 2004 was Holy Family Medical Center. Id., Applicant Ex. No. 1 (Warranty Deed);
5. For purposes of the instant matter, the Department concedes that the applicant is a charitable entity. Department Ex. No. 1 (Denial of Non-homestead Property Tax Exemption because property not in exempt use); Tr. pp. 13-14;

¹ Findings of Fact and Conclusions of Law refer to the tax year beginning January 1, 2004, unless otherwise stated.

6. The property is improved with a water storage tank that is owned and operated by the City of Des Plaines (hereinafter the “City”). Department Ex. No. 1 (Application for Non-homestead Property Tax Exemption);
7. The City has a right to use of the property for the construction of and maintenance of a water storage tank along with the necessary ingress and egress in and upon the property pursuant to a perpetual easement granted to it by the applicant in October 1964. Department Ex. No. 2 (Grant of Easement);
8. The water storage tank is used by the City to supply the City of Des Plaines with water and is used by the applicant especially to provide it with emergency water pressure and water. Applicant Ex. No. 13 (Affidavit of Exempt Use); Tr. p. 47 (acknowledgment by Department);
9. The dimensions of the property do not exceed what is necessary for the storage tank and the maintenance thereof, as well as for the ingress and egress from the public road to the storage tank. Applicant Ex. No. 11;
10. The storage tank has written on it “Holy Family Medical Center”. Department Ex. No. 2 (photographs of water storage tank);
11. Applicant receives no payments from the City for the City’s use of the property. Applicant Ex. No. 13 (Affidavit of Exempt Use).

Conclusions of Law:

Pursuant to its constitutional authority found in Article IX, §6, of the Illinois Constitution, 1970, property tax exemptions were enacted by the legislature to include:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity.

35 ILCS 200/15-65 (a)

This statutory provision requires that for a real property tax exemption to apply, the owner of the property must be an institution of public charity and, further, the property must be used exclusively for charitable or beneficent purposes. The Department concedes, for purposes of these proceedings, that the applicant is an institution of public charity. It denied the requested exemption because a unit of local government, the City of Des Plaines, erected a water storage tank on the property in order to provide water to the City. It is also the City that maintains the property for that specific purpose. The City's rights to construct and maintain the storage tank derive from a grant of a perpetual easement that applicant granted to the City in 1964.

The City, a municipal corporation, is entitled to a property tax exemption on property it owns that is used exclusively for public purposes. 35 ILCS 200/15-75. The Department argues that since the owner of the property, the applicant herein, is not the City, the fact that the use of the property is exclusively for municipal purposes is irrelevant.

While this may be true, it ignores an essential fact present in this matter. The applicant herein is a medical complex whose facility directly abuts the subject property. It is physically located in the City. There is no quarrel between the parties, and the evidence supports the conclusion, that the water storage tank is the primary source of water for the City (Tr. pp. 6 (opening statement by the Department); 28-9 (discussion regarding Applicant Ex. No. 13); 47 (statement by Department counsel)), is used by the

applicant to provide water and water pressure to the medical complex especially during emergencies, that it is necessary for the applicant to have the water storage tank available to it so that the applicant can conduct its operations without disruption and that it has been used by the applicant for such purposes. Thus, the evidence of record supports the conclusion that the water storage tank is necessary for the proper function of applicant's medical complex as a source of water and water pressure especially during emergencies. See Du Page County Board of Review v. Department of Revenue, 339 Ill. App. 3d 230 (2nd Dist. 2003).

It is basic to Illinois' law concerning tax exemptions that statutes granting exemptions must be strictly construed in favor of taxation. Rotary International v. Paschen, 14 Ill. 2d 480, 487 (1958). Further, "[T]he burden of sustaining the right to exemption rests upon the party seeking it." Id. The applicant herein has carried its burden proving clearly its right to an exemption for the property at issue.

Wherefore, for the reasons stated above, it is recommended that the property at issue herein be exempt from the imposition of property taxes for the year 2004.

Date: 11/22/06

Mimi Brin
Administrative Law Judge